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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Revise General Order 156 to Include Certain Electric Service Providers and Community Choice Aggregators and Encourage Voluntary Participation by Other Non-Utility Entities Pursuant to Senate Bill 255; Consider LGBT Business Enterprise Voluntary Target Procurement Percentage Goals; Incorporate Disabled Business Enterprises; Modify the Required Reports and Audits; and Update Other Related Matters.

Rulemaking 21-03-010

ADMINISTRATIVE LAW JUDGE'S RULING REGARDING PHASE 2

Pursuant to the procedural schedule in the August 30, 2022 Amended Scoping Memo and Ruling (Scoping Memo), this ruling sets forth several questions and seeks responses from parties to develop the record in Phase 2 of this proceeding. In addition, this ruling includes documents at Attachment A through Attachment D for consideration by parties when responding to the question herein. As set forth below, parties may file comments within 30 days of the date of this ruling. Parties may file reply comments within 45 days from the date of this ruling.

1. Background

Public Utilities Code Sections 8281-8286 declare that the economic well-being of the state of California "cannot be realized unless the actual and

potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed.” Over the past several decades, the California Public Utilities Commission (Commission) has implemented this state policy through its Supplier Diversity Program, which is set forth in General Order (GO) 156.¹

As part of the Commission’s continuing work to administer the Supplier Diversity Program, the Commission issued this rulemaking on March 23, 2021. On April 7, 2022, the Commission adopted Decision (D.) 22-04-035 in Phase 1 of this rulemaking.² D.22-04-035 implemented Senate Bill 255 and, in addition, established a procurement goal for LGBT business enterprises. The Commission also added business enterprises owned and controlled by persons with disabilities to the Supplier Diversity Program and required reporting on workforce and board diversity.

On August 30, 2022, the assigned Commissioner issued a Scoping Memo setting forth the issues and schedule for Phase 2 of this proceeding. Consistent with the scope of issues set forth therein, the parties are requested to respond to the below questions, as follows:

1. How should the Commission implement the workforce and board diversity reporting requirements adopted in D.22-04-035?

In D.22-04-035, the Commission adopted a reporting requirement for workforce and board diversity but deferred the specifics of these reports to

¹ GO 156 is available on the Commission’s website.

² D.22-04-035, *Decision Revising General Order 156 Supplier Diversity Program to Implement Senate Bill 255, Adopt a Voluntary Procurement Goal for LGBT Business Enterprises, Incorporate Persons with Disabilities Business Enterprises, and Other Updates* (April 7, 2022). This decision is available on the Commission’s website under the *Docket Card* for Rulemaking 21-10-003.

Phase 2 of this proceeding.³ The Commission also indicated that staff would develop a reporting template to assist parties with reporting on this newly adopted requirement and that stakeholder input would be considered prior to finalizing the reporting template.⁴ In D.22-04-035, the Commission identified two forms developed by the U.S. Equal Employment Opportunity Commission, EEO-1 and EEO-4, as useful guides when developing these reporting requirements. This ruling includes a draft template as Attachment A for consideration and review by parties. Parties are requested to provide comments on this draft template in accordance with the comment schedule set forth herein.

2. Whether the Commission should increase the percentages goals for the voluntary procurement from eligible business enterprises under GO 156 and, if so, what should be the amount of such increases?

In D.22-04-025, the Commission stated that in Phase 2 of the proceeding, it may consider whether it was reasonable to increase the voluntary percentage goals for eligible business enterprises under GO 156.⁵ The Scoping Memo confirmed that this issue would be considered in Phase 2. This ruling seeks recommendations from parties on whether any of the existing percentage goals should be increased. The existing goals can be found at Section 8.2 of GO 156 and are as follows:

8.2. Initial Minimum Goals Each utility and other covered entity shall establish minimum long-term procurement goals for each major category of products and services purchased from eligible suppliers of not less than the following: 15% for minority business enterprises; 5% for women business enterprises; 1.5% for disabled veteran business enterprises;

³ D.22-04-035 at 48 and 52.

⁴ D.22-04-035 at 48 and 52.

⁵ D.22-04-035 at 59.

and 0.5% for 2022, 1.0% for 2023, and 1.5% for 2024 and beyond for LGBT business enterprises. No procurement goal has been adopted for persons with disabilities business enterprises. Contracts or purchases with eligible suppliers under the Commission's Supplier Diversity Program may only count toward one procurement goal. For example, a minority and women business enterprises may be counted toward one goal, either the minority business enterprise goal or the women business enterprise goal but not both.

Parties are requested to provide comprehensive proposals for consideration and are encouraged to coordinate on joint proposals. Parties recommending increases (or decreases) should include a rationale and proposed methodology for setting the new increased goal. Parties are requested to provide comments on goals in accordance with the comment schedule set forth herein.

3. Whether the Commission should update the "guidelines" used by the Supplier Clearinghouse⁶ to certify eligible suppliers under the Supplier Diversity Program and, if so, the specific revisions that the Commission should consider?

In D.22-04-025, the Commission stated that in Phase 2 of this proceeding, it may update the "guidelines" relied upon by the Supplier Clearinghouse to "certify" suppliers. The Scoping Memo confirmed that the Commission would review these guidelines, which are referred to as "Eligibility Standards."

For approximately 10 years, the Supplier Clearinghouse has relied upon current Eligibility Standards, with minor modifications, to establish eligibility of applicants to the Commission's Supplier Diversity Program. When establishing eligibility, the Supplier Clearinghouse also relies on information provided in the

⁶ The Supplier Clearinghouse operates under a contract with utilities to certify eligible suppliers. Information about the guidelines relied upon by the Supplier Clearinghouse are available as of this writing at: <https://sch.thesupplierclearinghouse.com/?TN=sch>.

Application and certain required documents. These Eligibility Standards (Version 2022-1) can be found on the website of the Supplier Clearinghouse and are attached hereto at Attachment B.⁷ The Applications are attached hereto at Attachment C. Four different Applications exist and apply to different circumstances.⁸ The list of required documents is attached hereto at Attachment D. Parties are requested to provide comments on the Eligibility Standards, the Application, and the required documents in accordance with the comment schedule set forth herein. Parties are also requested to provide comments on whether it is reasonable to: (1) define the Eligibility Standards as “the guidelines and rules used by the Supplier Clearinghouse to verify eligibility of business owned and controlled by woman, minority, LGBT, and/or persons with disabilities”; and (2) authorize the Supplier Clearinghouse, an entity that contracts with utilities but is supervised by the Commission, to rely on these guidelines and standards to make its eligibility determination.

4. Whether the Commission should revise the definition of “minority” set forth in GO 156? Should the Commission add alternative criteria by which an applicant may meet the definition, and if so, what specific criteria should the Commission consider?

In D.22-04-025, the Commission stated that in Phase 2 of this proceeding, it may consider revising the definition of “minority” as set forth in GO 156.⁹ The Scoping Memo confirmed that this issue would be considered in Phase 2. The

⁷ The Eligibility Standards are linked on the home page of the Supplier Clearinghouse at: <https://sch.thesupplierclearinghouse.com/default.asp?tn=sch&xid=7335>.

⁸ These four Applications are as follows: (1) Comparable Agency Verification Application; (2) Fast Track Process Verification Application; (3) Re-Verification Application; and (4) Verification Application.

⁹ D.22-04-035 at 59.

current definition of minority has not been revised since this program was adopted several decades ago. The current definition can be found in GO 156 and below:

Current Definition of “Minority”

1.3.4. Minority Business Enterprise “Minority business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility or other covered entity shall presume that minority includes, but is not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups as defined herein.

1.3.9. African American Person “African American person,” for purposes of GO 156, refers to a person having origins in any black racial groups of Africa.

1.3.10. Hispanic American Person “Hispanic American person,” for purposes of GO 156, refers to a person of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.

1.3.11. Native American Person “Native American person,” for purposes of GO 156, refers to a person having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

1.3.12. Asian Pacific American Person “Asian Pacific American person,” for purposes of GO 156, refers to a person having origin in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

1.3.13. Other Groups and Individuals “Other groups or individuals” means persons found to be disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)) or the U.S. Secretary of Commerce, pursuant to Section 5 of Executive Order 11625.

This ruling proposes an updated definition of the term “minority” below. The updated definition is based on language in Government Code Section 14839(a)(10), as recently amended by Assembly Bill (AB) 2019 (Stats. 2022, Petrie-Norris), which provides that businesses at least 51 percent owned by, and whose management and daily operations are controlled by, one or more individuals who identify as any of the following “Black,” “Hispanic,” “Native American,” “Pacific-Asian,” and “Asian-Indian” may be eligible for participating in the small businesses contracting options. The below definition of these groups is the same as AB 2019, except “Caribbean” is added to the definition of “Hispanic” because “Caribbean” is included in GO 156 (Section 1.3.10).

The proposed definition below differs from the existing definition by adding “Portuguese culture or origin” to the definition of “Hispanic” and by modifying the description of “Pacific-Asian” by adding “Asian-Indian.” Parties may comment on the below proposed definition or recommend a different definition (with citations to the source of the definition). Parties are requested to provide comments on a revised definition of minority in accordance with the comment schedule set forth herein.

Proposed Definition of “Minority”

1.3.4. Minority Business Enterprise “Minority business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51% of the stock of which is

owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility or other covered entity shall presume that minority includes, but is not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups as defined herein.

1.3.9. Black (a person having origins in any of the Black racial groups of Africa).

1.3.10. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean, or other Spanish or Portuguese culture or origin regardless of race).

1.3.11. Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian).

1.3.12. Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including North Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh).

IT IS RULED that:

1. Parties may file comments on the issues and documents attached hereto (reporting template, Supplier Clearinghouse Eligibility Standards, Application, and list of the required documents) within 30 days from the date of this ruling.

2. Reply comments may be filed within 45 days from the date of this ruling.

Dated November 30, 2022, at San Francisco, California.

/s/ REGINA DEANGELIS

Regina DeAngelis
Administrative Law Judge

ATTACHMENT A

ATTACHMENT B

ATTACHMENT C

ATTACHMENT D